

The limits of transnational justice

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Propositions accompanying the thesis

**The Limits of Transnational Justice:
The European Court of Human Rights, Turkey and the Kurdish Conflict**

Dilek Kurban

1. The ECtHR's naïve application of the doctrine of margin of appreciation and the subsidiarity principle to authoritarian contexts has undermined its effectiveness in the protection of human rights, in particular those of minorities.
2. The ECtHR has never exhausted the jurisprudential tools and doctrines available to it in its oversight of gross human rights abuses in Turkey - not because it lacked the power to do so, but by political choice.
3. The way in which the ECtHR has responded to the cases arising from the Kurdish conflict has rested on the misplaced assumption that Turkey is a democratic regime whose legal system is capable of providing effective remedies for victims of gross human rights abuses and that the restrictions on Kurdish political and cultural rights are necessary in a democratic society.
4. Mastery of the English language and access to English-speaking international networks have become crucial for the effective mobilization of transnational justice. This has always been a handicap for Kurdish human rights activists.
5. Scholars and policymakers calling for constitutionalizing the ECtHR to alleviate its docket crisis must take into account differences between democratic and authoritarian contexts; the subsidiarity principle cannot be applied across the board without due attention to differences between the judicial systems and political cultures of contracting parties.
6. In deeply divided societies where nationhood is contested, constitutional courts are not necessarily impartial mediators but are often themselves part of the problem, as the Spanish/Catalan case has recently demonstrated.
7. Perhaps nowhere else is the tension between law and politics as illuminating and difficult to resolve as in the conflict between the individual demand for justice and the societal interest in 'moving on' in post-conflict settings.
8. Islamist political parties' recent experiments with governance in Egypt and Turkey cast further doubt on political Islam's compatibility with democracy, pluralism and secularism.
9. The emergence of Pedro Almodóvar's cinema cannot be understood outside the political and cultural context of Spain's post-Franco transition to democracy.